

SEP 11 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERALD HOWARD BURGESS,

Defendant - Appellant.

No. 06-10541

D.C. No. CR-00-00379-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted September 8, 2008^{**}

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Jerald Howard Burgess appeals from the district court's decision, following a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc), that it would not have imposed a different sentence had it known

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Burgess's contention that the district court failed to give him the opportunity to present mitigating evidence during the *Ameline* remand is belied by the record. The district court obtained the views of counsel in writing. *See Ameline*, 409 F.3d at 1084-85.

The remainder of Burgess's contentions are unreviewable because he failed to raise them during his initial appeal to this court. *See United States v. Thornton*, 511 F.3d 1221, 1228-29 (9th Cir. 2008); *United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006).

AFFIRMED.